dependent on the quantity of any dangerous drug then the exact amount of this dangerous drug which is to be stated in the charge assumes great importance. The prosecution should therefore refrain from mentioning the amount of the drug if the prosecution is not in a position to ascertain the exact amount of the drug when an accused person is first charged in court. Otherwise the charge need not state the quantity of the drug concerned and if there is no other valid reason why bail should not be granted the accused should be offered bail and the case adjourned for a few weeks for mention so that the position may be reviewed when the chemist report is available.

In the present case I am of the view that the provisions of section 41B cannot be invoked because the relevant condition in subsection (1)(b) of section 41B has not been strictly fulfilled. It cannot be said that the offence which the three accused persons are facing carries a term of imprisonment of more than five years under section 39A because there is no certainty that the actual amount of heroin which may be eventually found in the powdery substance would be five grammes or more in weight. And in the absence of any other valid impediment to the granting of bail the three accused persons ought to be released on bail. I therefore allow bail in the sum of $3,000 with one surety each and I shall reconsider their position after the actual amount of heroin is ascertained in due course.

Bail allowed.

Solicitors: *Datuk Balwant Singh.*

TAN ENG CHOON v. TAY BOON SEE

[O.C.J. (Wan Yahya J.) March 19, 1980]

[Malacca — Originating Summons No. 20 of 1979]

Landlord and Tenant — Lease — Construction of — Meaning of "in proportion to the increase of the assessment"

The plaintiff in this case sought for the true construction of a lease, clause 5 of which stipulates that "in the event of the assessment being increased by the government during the unexpired term of the lease the lessee agrees and undertakes to increase the rent payable to the lessor in proportion to the increase of the assessment." The monthly rent payable then was $140. The yearly assessment rate was increased from $86.40 to $129.60 by the District Council with effect from January 1, 1976. The new assessment represented a 50% increase from the old rate.

The plaintiff contended that his monthly rental should be proportionately increased by 50%. The defendant disputed this.

Held: clause 5 of the said lease meant that the lessee had stipulated to pay the lessor an increase in the rent in the same ratio as the increase in the assessment, i.e. by 50%. The rent payable by the lessee would therefore similarly appreciate from $140 per month to $210 per month.

ORIGINATING SUMMONS.

Humfrey Ball for the plaintiff.

D.A. Devadason for the defendant.

Cur. Adv. Vult.

Wan Yahya J.: This matter arose from an originating summons filed by the plaintiff seeking a declaration for the true construction of a lease.

On August 4, 1969 the plaintiff's predecessor in title and father leased to the defendant Holding No. 13 in the Mukim Village of Merlimau in Jasin District together with the premises erected thereon for a fixed period of 59 years with effect from August 15, 1969 and terminating on August 14, 2026. Clause 2 of the Annexure to this lease states that the monthly rental for the premises was $140 per mensem payable in advance on or before the 29th day of each calendar month.

By clause 5 the parties stipulated further on the rent as follows:

"5. In the event of the assessment being increased by the Government during the unexpired term of the lease the lessee agrees and undertakes to increase the rent payable to the lessor *in proportion to the increase of the assessment.*"

The yearly assessment rate was increased from $86.40 to $129.60 by the District Council with effect from January 1, 1976. The new assessment represented a 50% increase from the old rate.

The plaintiff contends that his monthly rental should be proportionately increased by 50%. The defendant disputes this.

Counsel for the defendant argued that the phrase 'in proportion to the increase of the assessment' merely means the breaking down of the assessment for the year into 12 monthly proportions for the purpose of adding up that amount to the monthly rental. Thus he argued the increase in this case of $43.20, when divided by 12, would give a sum of $3.60. This should be added to the monthly rental of $140 to give a new increased rental of $143.60.

The plaintiff's counsel, however, felt that the increase in rental should be proportionate to the increase in assessment and the proper calculation of the new rate should be by increasing the old rental in the same proportion by which the assessment has been increased, i.e. by 50%. It follows therefore that an increase by 50% of the old rental of $140 would be $70 and the new increased rental will add up to $210.

It was strongly urged by counsel for the defendant that I should adopt a principle of purposive interpretation in this case and take into consideration what the parties had in mind when they executed the lease. He drew my attention in particular to a passage appearing on page 16 of the book by Lord Denning entitled "The Discipline of the Law" which ran as follows:

"The literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the 'purposive approach'... In all cases now in the interpretation of statutes we adopt such a construction as will 'promote the general legislative purpose' underlying the provision. It is no longer necessary for the judges to wring their hands and say: 'There is nothing we can do about it'. Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it — by reading words in, if necessary — so as to do what Parliament would have done, had they had the situation in mind."

I am sure counsel had cited these in the persuasive rather than the authoritative vein, but then these are none the less the words of no lesser personality than Lord Denning himself and therefore merit vene-

rate consideration. Now the judiciousness and sagacity of this passage are indisputable but then with respect I am inclined to feel that it has been somewhat erroneously applied to the present case. The passage to which counsel referred me falls under the second heading of Part I dealing with Interpretation of Statutes. In the short passage, as I understand it, the author was discussing the doctrine of purposive approach in *interpretation of statutes* as will promote the general legislative purpose. The phrase 'so as to do what Parliament would have done' appearing in the last sentence could only mean that the subject-matter in discussion was the statute, the creation of Parliament, and not agreements or contracts which are the creation of individuals.

Interpretation of contracts, however, is subject to different rules. I do not think I can do better than borrow the words of Lord Denning in the same book at page 32 to elucidate the principle involved in the construction of contracts in which his Lordship said:

"The construction of contracts is virtually a different subject. When construing a statute or a will, you are considering the intentions of one body only — be it Parliament or a testator. When construing a contract, be it in writing or by word of mouth, you are considering the intentions of two parties — who have agreed together on the terms that shall bind them. As the maxim goes, there is *consensus ad idem*. But in discovering that intention, you are not to look into their actual minds. The parties are not even allowed to give evidence as to what they intended — except in special cases where there is a claim for rectification. You have to go by the outward expression of their intentions — as conveyed by the words set out in writing or by the spoken words they used. So once again we come back to the meaning of the words."

It is my opinion that not only the doctrine of 'purposive approach' but also of 'presumed intent', as discussed in the book, does not arise in this case, as the latter referred to a matter which the parties did not envisage. The parties were aware of the amount of the rent and the assessment and they had made a stipulation as to what the future rent is to be in the event of increase in assessment.

Counsel for the defendant attempted to introduce evidence of the intention behind his own drafted agreement which obviously offends the rule that no parol evidence is admissible to alter or vary the terms of a contract. To my mind, there is no apparent ambiguity to the clause 'in proportion to the increase'. A thing is said to be in proportion to another when there is a comparative relation or ratio between the two. The relationship is such that any increase or decrease in one will involve a relative adjustment of the other so as to maintain the existing harmony between them. As an illustration, if we say 2 in proportion to 3, we mean for every 2 parts there shall be a corresponding 3 parts of the other, or in figurative mathematical ratio "2: 3". Any increase of the first figure, i.e. the 2, let us say, to 4 would require the corresponding adjustment of the 3 to 6 in order to retain that constant relativity.

In our present case the two amounts, which are in proportion to one another, are the 'rent' and the 'assessment' and not the 'yearly rent' in proportion to the 'monthly rent'. Therefore any increase in the assessment must involve a relative increase in the rent. As the assessment had been increased from $86.40 to $129.60, i.e. by addition of 50% of $86.40, the rent has to be increased likewise by the addition of a further $70, i.e. 50% of the former amount of $140, making it $210.

On the whole I consider that on the true construction of the agreement, clause 5 which reads "In the event of the assessment being increased by the Government during the unexpired term of the lease the lessee agrees and undertakes to increase the rent payable to the lessor in proportion to the increase of the assessment" meant that the lessee had stipulated to pay the lessor an increase in the rent in the same ratio as the increase in the assessment, i.e. by 50%. As the assessment had been increased by 50%, the rent payable by the lessee would similarly appreciate from $140 per month to $210 per month.

Order accordingly.

Solicitors: *H.B. Ball; D.A. Devadason.*

GOVERNMENT OF MALAYSIA v. ADNAN BIN AWANG & ORS.

[O.C.J. (Wan Yahya J.) March 17, 1980]
[Malacca — Civil Suit No. 154 of 1975]

Contract — Action for breach of — Scope of — Contracts Act, 1950, s. 62.

Contract — Subsequent contract — Principle of novation — When applicable.

The first defendant in this case entered into an agreement with the plaintiff by the terms of which he was to be provided with a course of training for a period of 2 years. In return, the first defendant agreed to serve the plaintiff if so requested within 12 calendar months after the completion of such course for a period of 5 years as a teacher. The second and third defendants acted as sureties to the said agreement.

The first defendant had successfully completed his course of training and was appointed as an attachment teacher with the Ministry of Education on January 1, 1972. On October 2, 1972 he was offered by the said Ministry a temporary post of Grade C teacher. This was followed by a formal offer of permanent and pensionable commission. One of the conditions stipulated in both offers was that the service of the first defendant may be terminated by one month's notice or by the payment of one month's salary in lieu of notice. On November 12, 1972, the first defendant accepted the first offer made by the Ministry of Education. However, on November 29, 1972 before the offer by the Public Service Commission was made, the first defendant gave a month's notice to resign his post. His application to resign was refused and returned to him.

On January 1, 1973 when school re-opened, the first defendant was absent. He had, by then, taken up his new appointment with the Armed Forces. After various correspondence notices of demand were made to all three defendants to repay the plaintiff a sum of $5,400. Consequently there were several correspondence between the parties. The plaintiff on October 20, 1978 wrote to the first defendant stating the acceptance of the first defendant's original offer to pay $50 per month provided he would agree to a consent judgment being entered against him for the sum claimed with interest. The first defendant disputed this resulting in the present action.

The defendants relied on the clause enabling each party to terminate the first defendant's service by one month's notice in both the offers made on October 2, 1972 and on May 28, 1973. By the inclusion of the said clause, they claimed that the plaintiff had substituted the original agreement with a new one and that by reason of section 62 of the Contracts Act, the defendants need not perform their obligations under the original contract.